



MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion

08-09-012

A public employee must not, with respect to a particular matter, represent another person or provide advice to another person that would qualify as expert opinion in a court, if (a) a County agency is a party to the matter and the person being assisted has a position adverse to the County agency or (b) a County agency has a direct and substantial interest in the matter that is adverse to the interest of the person being assisted. § 19A-14(g)(1).¹ An employee asks whether he can provide policy advice to his hometown on a condemnation action it has brought against the Maryland-National Capital Park and Planning Commission. The Commission concludes that the employee can advise his hometown because that advice would neither be representation nor qualify as expert opinion in a court.

The employee's hometown has filed a condemnation action against a development company in the Circuit Court for Montgomery County. The town is seeking to condemn the company's interest in a tract of land located outside the town's boundaries. Subsequent to the condemnation action, the company conveyed, by a Deed of Dedication, the tract of land to the Maryland-National Capital Park and Planning Commission for use, in perpetuity, as a "Legal Open Space Natural Area." The Park and Planning Commission intervened in the lawsuit (as an additional defendant) in opposition to the town's condemnation action. The town is convening an ad hoc group to advise it in the condemnation action. The employee anticipates that he will be invited to join this group.

The Commission concludes that by providing behind-the-scenes advice to his hometown, the employee would not be representing the town. In addition, the Commission concludes that any advice the employee would give the Town would not qualify as expert opinion in a court. The Town may call upon the employee to provide policy advice regarding its position in the condemnation action. This advice is not the equivalent of expert opinion. The town is not calling upon the employee to give an appraisal of the subject property or any other service that would normally be provided by an expert. Thus, the prohibition in § 19A-14(g) is not implicated.

¹ There are some exceptions in §§ 19A-14(g)(2) & (3) which are not relevant to this inquiry.

In reaching this decision the Commission has relied upon the facts as presented by the requester.

A handwritten signature in black ink, reading "Antar C. Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

December 9, 2008

Antar C. Johnson, Chair